

21 C.J.S. Courts § 154

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Courts

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IV. Terms and Sessions

D. Other Matters

§ 154. Designation or assignment of judges

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West's Key Number Digest

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Designated officials are authorized to assign judges to other courts or to courts in other geographic or administrative areas, and proper assignment confers jurisdiction upon the assigned judge to conduct judicial business.

No substantive or procedural right entitles a defendant to one judge instead of another.¹ The chief justice, a court acting as a body, or other designated judicial officer may assign a judge to sit in another court or to hold court in another county, district, or department when authorized by a constitutional provision, valid statutory provision, or authorized rule of court,² but only the designated person may exercise the power.³ Assignment judges may cross-assign more than one municipal court judge to carry on in case of the disqualification or inability of the regularly assigned judge.⁴ The authority to administer the courts may include an implicit grant of power to assign judges.⁵ A constitutional grant of power may not be limited by statute,⁶ and statutes relating to the assignment of judges must not contravene constitutional provisions.⁷ The absence of any constitutional provision referring to the assignment of particular judges does not deprive the legislature of power to enact statutes relating to their assignment.⁸

Such an assignment is valid and sufficient to confer jurisdiction if it is authorized by a constitutional provision, valid statutory provision, or authorized rule of court.⁹ Assignments to a particular division of the court does not limit a judge's authority to try cases.¹⁰ In the absence of a statutory provision mandating that the order be filed, failure to file it will not divest the court of its power to adjudicate cases.¹¹

An order of assignment is insufficient in itself to confer jurisdiction if the chief justice or other officer making it lacks the authority to do so;¹² and in such case—or where the assignment is found invalid or where there is no assignment whatever—

a judge of one court who is not a judge (whether *ex officio* or otherwise) of another court until the judge is assigned thereto cannot perform judicial acts in the latter court or hold a term of that court.¹³ However, a district court judge who receives a case through reassignment has jurisdiction to hear and rule on the parties' motions if, pursuant to a federal district's case assignment system, it was an obvious clerical error for the case to be assigned to the original judge, and the error is corrected by reassignment of the case.¹⁴ The appellate court considers three factors in determining whether reassignment of a case to a different judge is warranted: (1) whether the original judge would reasonably be expected upon remand to have substantial difficulty in disregarding previously expressed views or findings that were determined to be erroneous or based on evidence that must be rejected, (2) whether reassignment is advisable to preserve the appearance of justice, and (3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of fairness.¹⁵ Adverse rulings, even if they are erroneous, are not in themselves proof of prejudice or bias warranting reassignment of a case to a different district court judge.¹⁶ A statute that authorizes the chief judge of the United States Tax Court to appoint and assign special trial judges to "any other proceeding which the chief judge may designate" permits the chief judge to assign any tax court proceeding, regardless of complexity or amount, to a special trial judge for hearing and preparation of proposed findings and written opinion.¹⁷ However, a panel of the court of appeals consisting of two Article III judges and one Article IV territorial court judge does not have the authority to decide a defendant's appeal since provisions of the designation statute do not permit the chief judge of the Northern Mariana Islands to sit by designation on the Ninth Circuit.¹⁸ Furthermore, even though the defendants fail to object to the fact that a panel was not constituted in accordance with the designation statute, the *de facto* officer doctrine—which confers validity upon acts performed by a person acting under the color of official title even though it is later discovered that the legality of that person's appointment or election to office is deficient—does not validate the affirmance of convictions by a court of appeals.¹⁹

Temporary assignments.

Temporary assignments may be authorized by statute, constitution, or applicable rules of court²⁰ if the assignment is expressly limited in duration²¹ or subject matter,²² and the applicable procedural requirements are satisfied.²³ Under applicable rule of court, the initial judge need not be absent, disqualified, or disabled before temporary assignment of another judge is permitted.²⁴

Notice.

Under statutes, proper assignment of a judge may depend on whether the parties have been given notice that is reasonable,²⁵ practical,²⁶ or actual.²⁷

CUMULATIVE SUPPLEMENT

Cases:

Extraordinary circumstance arose from absence of legal authority addressing whether Federal Mine Safety and Health Review Commission could entertain claim that Appointments Clause as applied to contractor prevented administrative law judge who was appointed by chief administrative law judge from deciding its case, allowing for Court of Appeals on appeal to excuse forfeiture of claim; although building blocks of for resolving issue were established and weathered, no Supreme Court or court of appeals case brought them together, contractor did identify issue, and it did not consent to decision by improperly appointed administrative law judge. *U.S. Const. art. 2, § 2, cl. 2*; Federal Mine Safety and Health Act of 1977 § 113, 30 U.S.C.A. § 823(b) (2). *Jones Brothers, Inc. v. Secretary of Labor*, 898 F.3d 669 (6th Cir. 2018).

After judge consolidated related medical malpractice actions against defendants and assigned them to himself, defendants were entitled to writ of mandamus ordering judge to return cases to judges to whom they had originally been assigned; piecemeal appeals following entry of judgments would have had potential for inconsistent results, and judge was patently and unambiguously without jurisdiction to take actions he had taken because judge was not the administrative judge, judge did not have the lowest-numbered case, and judge did not hold required hearing before consolidating cases. Sup.Ct.Rules, Rule 4.01(A); Rules Civ.Proc., Rule 42. *State ex rel. Durrani v. Ruehlman*, 147 Ohio St. 3d 478, 2016-Ohio-7740, 67 N.E.3d 769 (2016).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—[Coley v. Bagley](#), 706 F.3d 741 (6th Cir. 2013).
- 2 Vt.—[Ketcham v. Lehner](#), 149 Vt. 314, 542 A.2d 290 (1988).
- 3 Ohio—[Schucker v. Metcalf](#), 22 Ohio St. 3d 33, 488 N.E.2d 210 (1986).
- 4 N.J.—[State v. Broom-Smith](#), 201 N.J. 229, 989 A.2d 840 (2010).
- 5 Cal.—[Mosk v. Superior Court](#), 25 Cal. 3d 474, 159 Cal. Rptr. 494, 601 P.2d 1030 (1979).
- 6 Mont.—[State ex rel. Welch v. District Court of Seventh Judicial Dist. In and For Richland County](#), 209 Mont. 397, 680 P.2d 327 (1984).
- 7 S.C.—[State ex rel. Riley v. Martin](#), 274 S.C. 106, 262 S.E.2d 404 (1980).
- 8 Pa.—[Ruano v. Barbieri](#), 42 Pa. Commw. 67, 400 A.2d 235 (1979).
- 9 Mo.—[State ex rel. Helms v. Moore](#), 694 S.W.2d 502 (Mo. Ct. App. S.D. 1985).
- 10 Fla.—[In Interest of Peterson](#), 364 So. 2d 98 (Fla. 4th DCA 1978).
- 11 Mo.—[Jones v. Chrysler Corp.](#), 731 S.W.2d 422 (Mo. Ct. App. S.D. 1987).
- 12 Ohio—[Schucker v. Metcalf](#), 22 Ohio St. 3d 33, 488 N.E.2d 210 (1986).
- 13 Ark.—[Burris v. Britt](#), 281 Ark. 225, 663 S.W.2d 715 (1984).
- 14 U.S.—[Fries v. Helsper](#), 146 F.3d 452 (7th Cir. 1998).
- 15 U.S.—[Gonzalez v. Hasty](#), 802 F.3d 212 (2d Cir. 2015).
- 16 U.S.—[Arrowpoint Capital Corp. v. Arrowpoint Asset Management, LLC](#), 793 F.3d 313 (3d Cir. 2015).
- 17 U.S.—[Freytag v. C.I.R.](#), 501 U.S. 868, 111 S. Ct. 2631, 115 L. Ed. 2d 764 (1991).
- 18 U.S.—[Nguyen v. U.S.](#), 539 U.S. 69, 123 S. Ct. 2130, 156 L. Ed. 2d 64 (2003).
- 19 U.S.—[Nguyen v. U.S.](#), 539 U.S. 69, 123 S. Ct. 2130, 156 L. Ed. 2d 64 (2003).
- 20 Mont.—[State ex rel. Wilcox v. District Court of Thirteenth Judicial Dist.](#), 208 Mont. 351, 678 P.2d 209 (1984).
- 21 Ala.—[Cook v. Cook](#), 515 So. 2d 1269 (Ala. Civ. App. 1987).

Indefinite assignment contravening constitutional provisions

Fla.—[Payret v. Adams](#), 500 So. 2d 136 (Fla. 1986).

22 Alaska—[Kochutin v. State](#), 739 P.2d 170 (Alaska 1987).

23 Pa.—[Com. v. Allem](#), 367 Pa. Super. 173, 532 A.2d 845 (1987).

24 Fla.—[Judges of Polk County Court by Herring v. Ernst](#), 615 So. 2d 276 (Fla. 2d DCA 1993).

25 Pa.—[Com. v. Allem](#), 367 Pa. Super. 173, 532 A.2d 845 (1987).

26 Tex.—[Williams v. State](#), 746 S.W.2d 333 (Tex. App. Fort Worth 1988), petition for discretionary review refused, (Feb. 1, 1989).

27 Wis.—[State ex rel. Laborers Intern. Union of North America, AFL-CIO v. Circuit Court for Kenosha County](#), 112 Wis. 2d 337, 332 N.W.2d 832 (Ct. App. 1983).

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